

FILE

OCT 28 2013

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

NICHOLAS WIZENBURG,

Petitioner,

vs.

ATTORNEY GENERAL OF THE
STATE OF MONTANA,

Respondent.

CV 13-127-M-DWM-JCL

ORDER

Nicholas Winzenburg¹ is a state prisoner proceeding pro se. He petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2254. Magistrate Judge Lynch recommends denying the petition.

Winzenburg has not objected to Judge Lynch's Findings and Recommendation. The Court reviews findings and recommendations that are not specifically objected to for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

¹ Petitioner give his name as "Winzenburg," "Wizenburg," and "Walker." He is listed by Montana State Prison as "Wizenburg." Because he appears to use "Winzenburg" more often, that is what he is called in the body of this Order. The case was filed under the name "Wizenburg."

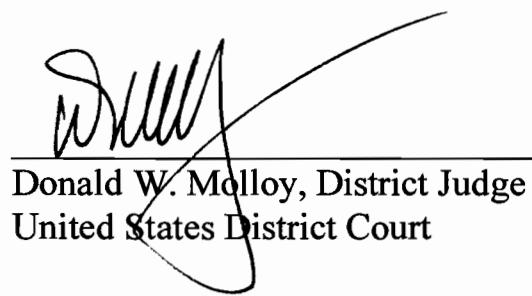
The Court finds no clear error with Judge Lynch's determination that the Order of Revocation, Judgment and Sentence (Doc. 1-2) does not show any error and that the situation does not mandate credit for time served. *See N.C. v. Pearce*, 395 U.S. 711, 718 (1969), *overruled on other grounds*, *Ala. v. Smith*, 490 U.S. 794, 798-800 (1989).

Accordingly, IT IS ORDERED that the Findings and Recommendation (Doc. 6) is ADOPTED IN FULL. Nicholas Winzenburg's petition for writ of habeas corpus (Doc. 1) is DENIED.

IT IS FURTHER ORDERED that the Clerk of Court is directed to enter by separate document a judgment in favor of Respondent and against Petitioner.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

Dated this 26 day of October, 2013.



Donald W. Molloy, District Judge
United States District Court